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Morgan E. Malino  
Carr & Ferrell, LLP  
2225 East Bayshore Road, Suite 200  
Palo Alto, CA 94303

In re Application of	:	
HERSH, et al.	:	DECISION ON PETITION
Application No.: 09/701,797	:	
PCT No.: PCT/US99/12433	:	UNDER 37 CFR 1.137(b)
Int. Filing Date: 03 June 1999	:	
Priority Date: 03 June 1998	:	
Attorney Docket No.: PA1675US	:	
For: METHOD FOR INCREASED CONCURRENCY	:	
IN A COMPUTER SYSTEM	:	

This decision is in response to applicant's "Petition For Revival of an Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b)" filed 16 January 2002. Applicant included the \$640.00 small entity petition fee.

### **BACKGROUND**

On 03 June 1999, applicant filed international application PCT/US99/12433, which claimed priority of an earlier application filed 03 June 1998. A Demand for international preliminary examination, in which the United States was elected was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 03 December 2000.

On 01 December 2000, applicant filed a transmittal letter for entry into the national stage in the United States accompanied by the requisite basic national fee and a power of attorney executed by inventor Clifford HERSH.

On 11 January 2001, applicant was mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" (Form PCT/DO/EO/905) and a "NOTIFICATION OF DEFECTIVE OATH OR DECLARATION" (Form PCT/DO/EO/917) informing applicant that the declaration filed 01 December 2000 was defective in that it did not identify the citizenship, city, state and country of residence for all the inventors. Applicant was advised of the need to provide an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the international application number and international filing date and providing a surcharge of \$65.00 for providing the oath or declaration later than the appropriate 20 or 30 months from the earliest priority date. (37 CFR 1.492(e)). Applicant was advised of the need to respond within one month or the application would be abandoned as to the United States.

On 13 February 2001, applicant filed a second declaration for patent executed by Clifford HERSH and Joan TODD as the legal representative for deceased inventor Herbert W. SULLIVAN. The filed declaration consisted of two separate declarations listing only one of the two individuals named above.

On 23 February 2001, applicant was mailed a "NOTIFICATION OF DEFECTIVE OATH OR DECLARATION" (Form PCT/DO/EO/917) and a "NOTIFICATION OF A DEFECTIVE RESPONSE" informing applicant that the declaration filed 13 February 2001 did not comply with 37 CFR 1.497(a) and (b) and that applicant was afforded one month to file a compliant oath or declaration or the application would become abandoned as to the United States.

On 10 August 2001, applicant was mailed a "NOTIFICATION OF ABANDONMENT" (Form PCT/DO/EO/909) for failing to respond to the "NOTIFICATION OF A DEFECTIVE RESPONSE" mailed 23 February 2001 within the time period set therein.

On 16 January 2002, applicant filed the present petition accompanied by a check in the amount of \$705.00 (\$65.00 as payment of the surcharge for providing the oath or declaration later than the appropriate 20 or 30 months from the earliest priority date and \$640.00 as payment of the petition fee). In addition, applicant filed a "Response to Notification of a Defective Oath or Declaration" accompanied by a declaration for patent.

### **DISCUSSION**

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required).

With regard to Item (2), applicant included payment of the petition fee along with the present petition.

As to Item (3), applicant's statement that the "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" meets the requirements of 37 CFR 1.137(b)(3).

With regard to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

Thus, applicant has satisfied Items (2), (3) and (4) above.

With regard to Item (1), the proper response was the submission of an executed oath or

declaration of the inventors which complies with 37 CFR 1.497 (a) and (b). Applicants have not submitted a compliant declaration. The submitted declaration in effect lists two first inventors. As discussed in the Manual of Patent Examining Procedure (MPEP) section 201.03, an oath or declaration under 37 CFR 1.63 by each actual inventor must be presented. While each inventor need not execute the same oath or declaration, **each oath or declaration executed by an inventor must contain a complete listing of all inventors so as to clearly indicate what each inventor believes to be the appropriate inventive entity.** In addition, where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration.

The declaration also appears to be a request for acknowledgment of status under 37 CFR 1.42 in that inventor Herbert SULLIVAN is apparently deceased. Applicant is advised that in such cases the residence, post office address and country of citizenship information must be provided for both the deceased joint inventor, Herbert SULLIVAN and the legal representative, Joan TODD.

For the reasons stated above, the petition for revival cannot be granted at this time and the application remains abandoned.

#### **CONCLUSION**

For the reasons stated above, the petition for revival is **DISMISSED**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." No additional petition fee is required.

Any further correspondence with respect to this matter should be directed to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



Derek A. Putonen  
Petitions Attorney  
PCT Legal Office  
Tel: (703) 305-0130  
Fax: (703) 308-6459